



Arizona Department of Environmental Quality

presentation for

Clean Water Act § 404 Assumption Kick-off Stakeholder Meetings

June 6, 2018, Phoenix, AZ

June 7, 2018, Tucson, AZ



What is Clean Water Act § 404 Dredge and Fill?

Section 404 of the Clean Water Act (CWA):

- Establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands.
- Requires a permit before dredged or fill material may be discharged into waters of the United States



CAP Tonopah Desert Recharge Project
Source: AZTEC TYP SA Group



Soldier Wash downstream of Brewer Road
Source: Redrocknews.com

What does “assumption” mean?

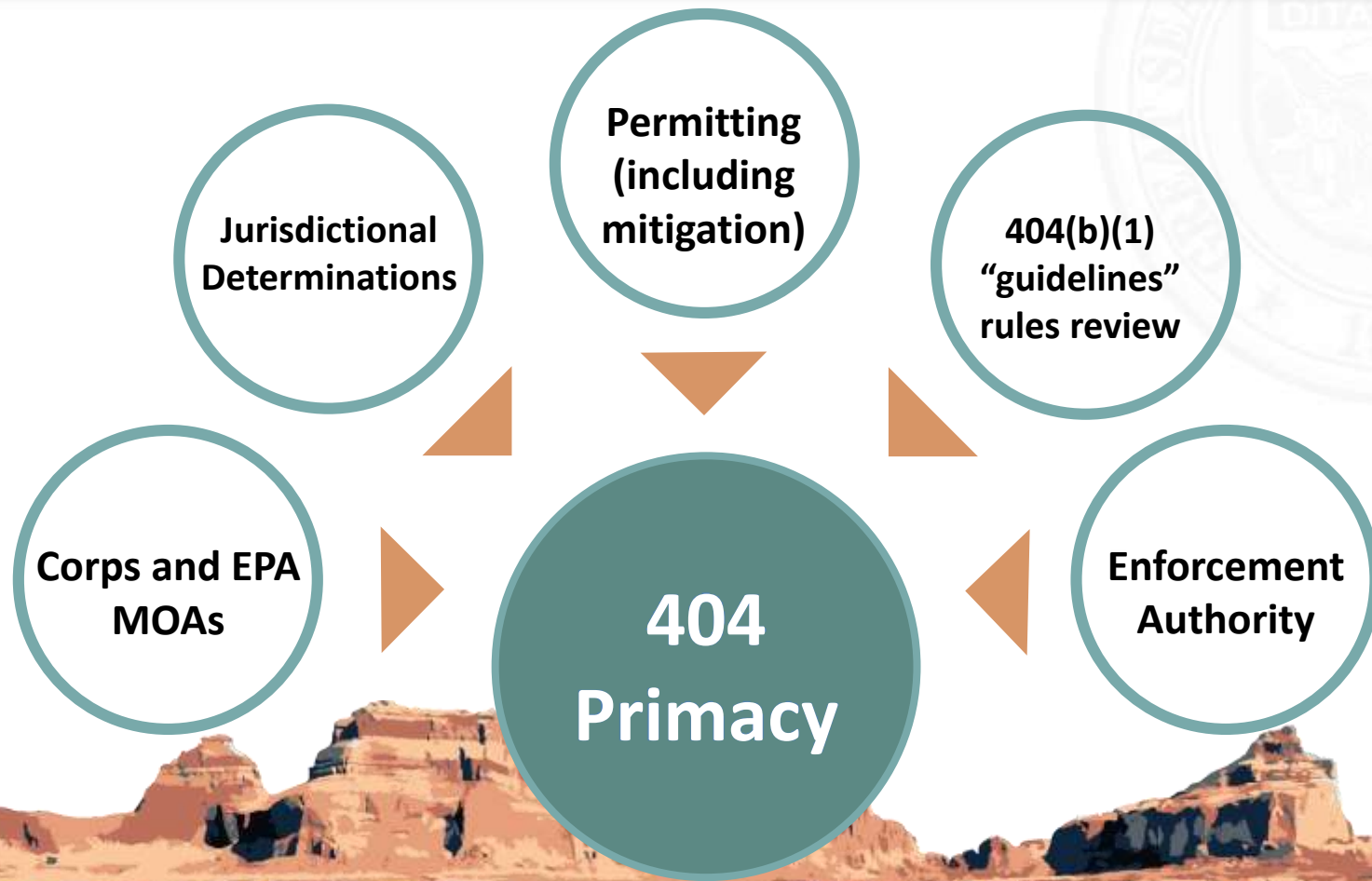
- Determine what waters are regulated under the Clean Water Act
- Prevent and mitigate impacts from dredge and fill activities in Waters of the United States in Arizona
- Assume primary responsibility to issue and deny dredge and fill permits, with EPA oversight

**Section 10
waters
(Colorado
River)**

**Tribal
Waters**



404 Assumption Requirements



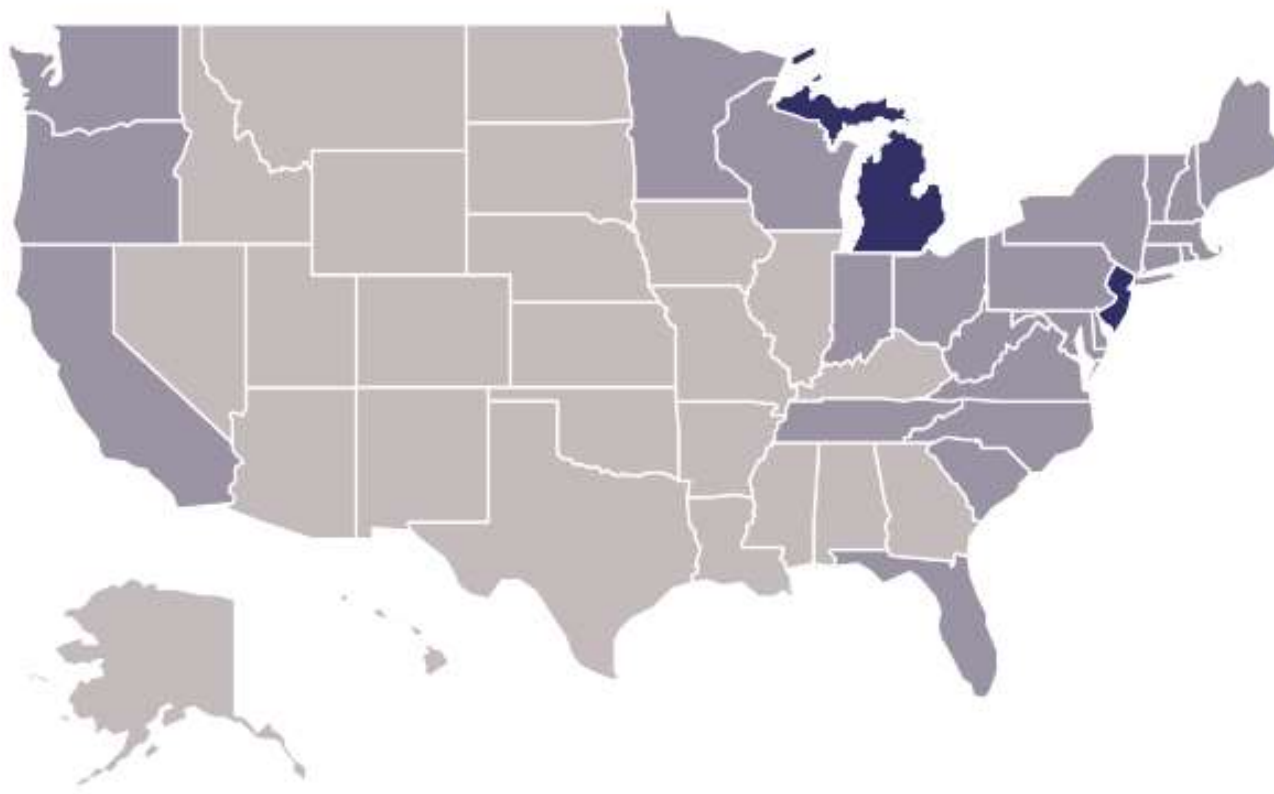
“It is the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution ...

It is the policy of Congress that the States ...implement the permit programs under sections 1342 and 1344 [CWA § 404] of this title.”

33 USC § 1251 (CWA § 101)

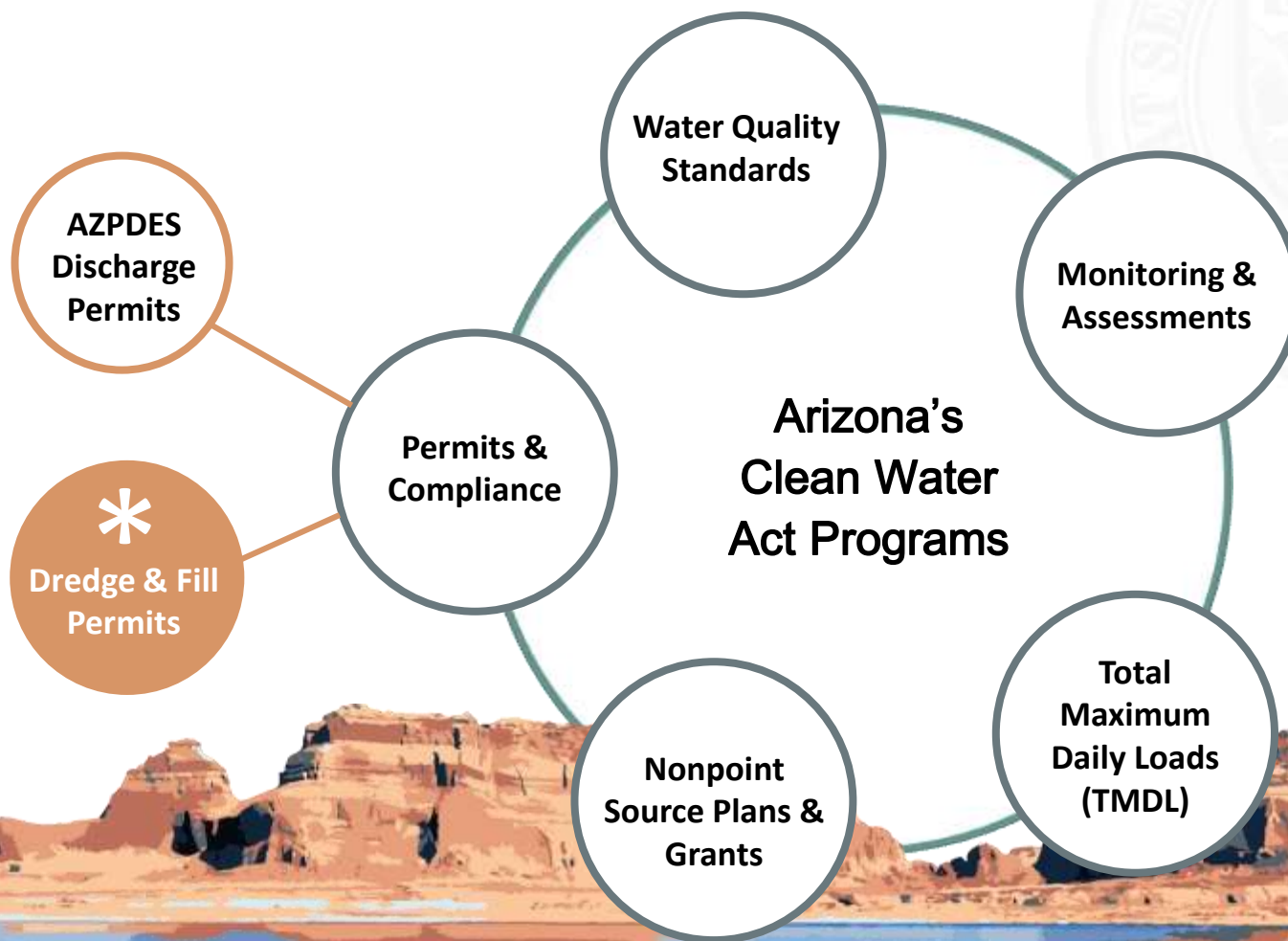


The National Picture



- Corps-administered 404, no state wetland program regulating dredge and fill
- Corps-administered 404 + state wetland program*
- Full assumption of the 404 program

**may have State Programmatic General Permits to eliminate duplication between state wetland permits and 404 permits*



* Dredge and Fill permits are the only state assumable section of the Clean Water Act for which Arizona does not have primary authority

Why now? What is the benefit Arizona sees?

Days to Permit Decision (Fiscal Year)



ADEQ Permit Timeframes from 2012 to 2017

- ✓ Increased speed
- ✓ Local Control – Cooperative Federalism
- ✓ Better customer service
- ✓ Alignment of CWA programs
- ✓ Reduced lifecycle costs

CWA 404 Assumption Process



- Allows ADEQ to adopt a CWA 404 program
 - Jurisdictional determinations (JDs),
 - 404(b)(1) project impact review,
 - Compensatory mitigation, and
 - Enforcement
- No more stringent than CWA requirements

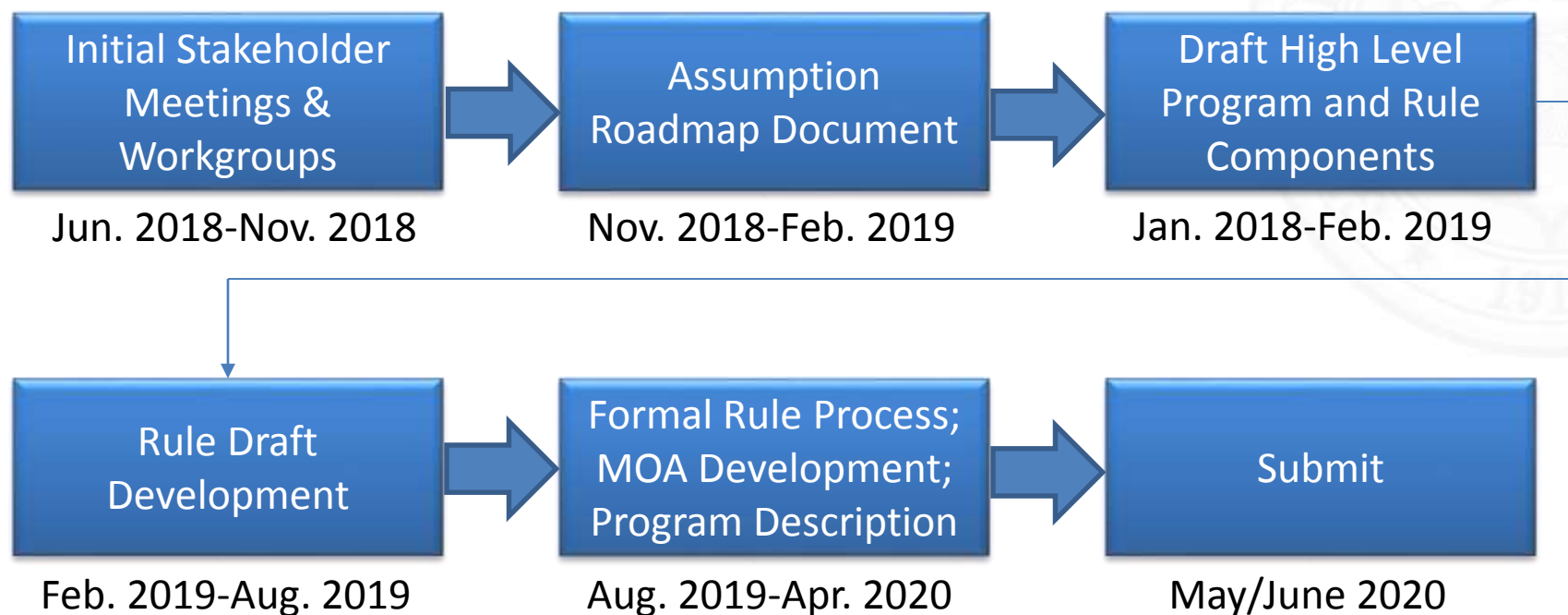


What does the statutory authority mean?

- ADEQ **MAY** adopt 404 permit program
 - The program would be fee based
 - Need a roadmap document to ensure value-added
 - Legislation will allow for smooth transition to rulemaking and submittal
 - Authority expires in 5 years if not approved by then
- Army Corps will continue to process JDs and permits until state program approval



Next Steps: Proposed Process and Timeline



Pros and Cons to State Assumption

Pros

Cons



Opportunities for Improving Existing Process

Jurisdictional
Determination

Application for
General or
Individual
Permit

Technical
Review (e.g.
NEPA/
404(b)(1))

Inter-Agency
Coordination
(e.g. FWS)

Compensatory
Mitigation

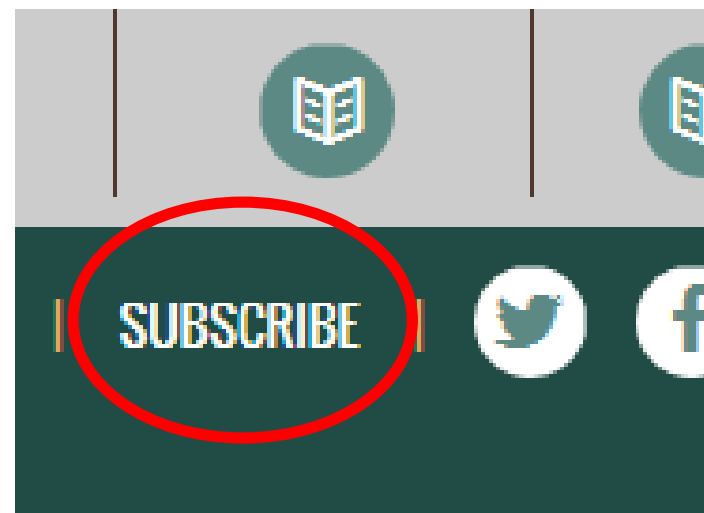
Other



- Potential roadblocks (e.g. ESA)
- Other Information Needed to Determine Path Forward
- Areas of Focus to Consider in Developing Program and Rule



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- [Subscribe](#) specifically to the “CWA 404 Stakeholder Communications” list





Questions, concerns, input on CWA 404 assumption?

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